

AN ACT relating to the financial examination of insurers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.2-210 is amended to read as follows:

(1) As used in KRS 304.2-210 to 304.2-300, unless the context requires otherwise, "examination workpaper" means a written or recorded document, note, memorandum, critique, comment, recommendation, or other information copied, established, created, or retained by the executive director or his designee for the purpose of conducting an examination or drafting an examination report.

(2) For the purpose of determining financial condition, ability to fulfill and manner of fulfillment of its obligations, the nature of its operations, and compliance with law, the executive director shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer as often as reasonably necessary. He shall so examine each domestic insurer not less frequently than every five (5) ~~three (3)~~ years. Examination of a reciprocal insurer may include examination of its attorney-in-fact as to its transactions relating to the insurer. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States, except as the executive director otherwise requires.

(3) In scheduling and determining the nature, scope, and frequency of the examinations, the executive director shall consider the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the Examiner's Handbook adopted by the National Association of Insurance Commissioners.

(4) For purposes of completing an examination of an insurer, the executive director may examine or investigate any person or the business of any person, insofar as the examination or

investigation is, in the sole discretion of the executive director, necessary and material to the examination of the insurer.

(5) The executive director shall in like manner examine each insurer applying for an initial certificate of authority to transact insurance in this state.

(6) In lieu of making his own examination, the executive director may, in his discretion, accept a full report of the most recently completed examination of a foreign, or alien, insurer, certified to by the insurance supervisory official of another state. Reports shall only be accepted if:

(a) The insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or

(b) The examination is performed under the supervision of an accredited insurance department or with the participation of one (1) or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(7) As far as practical, the examination of a foreign or alien insurer shall be made in cooperation with the insurance supervisory officers of other states in which the insurer transacts business, and for the purpose thereof, the executive director may participate in joint examinations of insurers or be represented in an examination by an examiner of another state.

Section 2. KRS 304.2-320 is amended to read as follows:

(1) Notice of hearings shall be given in accordance with the provision of this chapter and KRS Chapter 13B. If the persons to be given notice are not specified in the provision pursuant to

1 which the hearing is held, the executive director shall give notice to all persons whose pecuniary
2 interest, to the executive director's knowledge or belief, are to be directly and immediately
3 affected by the hearing.

4 (2) If any hearing is to be held for consideration of matters which, under subsection (1) of
5 this section, would otherwise require separate notice to more than thirty (30) persons, in lieu of
6 other notice the executive director may give notice of the hearing by publication pursuant to
7 KRS Chapter 424; but the executive director shall mail this notice to all persons who had
8 requested the same in writing in advance and have paid to the executive director the reasonable
9 amount fixed by him to cover the cost thereof. **The costs associated with the notice of hearing**
10 **by publication shall be borne by the person seeking the hearing.**

11 Section 2. KRS 304.3-180 is amended to read as follows:

12 (1) A certificate of authority shall continue in force as long as the insurer is entitled thereto
13 under this code, and until suspended or revoked by the executive director or terminated at the
14 insurer's request; subject, however, to continuance of the certificate by the insurer each year by:

15 (a) Payment of the continuation fee provided in Subtitle 4 by March 1, or, if paid by
16 mail, postmarked no later than March 1;

17 (b) Due filing by the insurer of its annual statement for the next preceding calendar
18 year as required by KRS 304.3-240;

19 (c) Payment by the insurer of premium taxes with respect to the preceding calendar
20 year; and

21 (d) Due filing by domestic companies of quarterly statements as approved by the
22 National Association of Insurance Commissioners.

(2) If not so continued by the insurer, its certificate of authority shall expire at midnight on the June 30 next following the failure of the insurer to continue it in force, unless earlier revoked for failure to pay taxes as provided in KRS 304.4-040. The executive director shall promptly notify the insurer of the occurrence of any failure resulting in impending expiration of its certificate of authority.

(3) The executive director may, in his discretion, upon the insurer's request made within three (3) months after expiration, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in the expiration. Otherwise the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.

(4) **Beginning with the statutory audits for the year 2010, an** ~~[An]~~ insurer shall not use the same **lead or coordinating** ~~[accountant or]~~ partner of an accounting firm responsible for preparing the audited financial statement for more than **five (5)** ~~[seven (7)]~~ consecutive years.

Section 3. KRS 304.3-242 is amended to read as follows:

(1) **Every insurer authorized to transact property or casualty insurance, unless otherwise exempt in accordance with subsection (7) of this section, shall annually submit the opinion of an appointed actuary entitled "Statement of Actuarial Opinion." This opinion shall be filed in accordance with the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions.**

(2) **Every insurer authorized to transact property or casualty insurance that is required to submit a Statement of Actuarial Opinion shall annually submit an Actuarial Opinion Summary written by the company's appointed actuary. The Actuarial Opinion Summary shall**

be filed in accordance with the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions and shall be considered as a document supporting the Statement of Actuarial Opinion.

(3) An actuarial report and underlying workpapers as required by the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions shall be prepared to support each Statement of Actuarial Opinion.

(4) The executive director may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare the supporting actuarial report or workpapers if:

(a) The insurer fails to provide a supporting actuarial report or workpapers at the request of the executive director; or

(b) The executive director determines that the supporting actuarial report or workpapers provided by the insurer is otherwise unacceptable to the executive director.

(5) The appointed actuary shall not be liable for damages to any person other than the insurer and the executive director for any act, error, omission, decision or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

(6) (a) The Statement of Actuarial Opinion shall be provided with the annual statement in accordance with the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions and shall be available for public inspection.

(b) Documents, materials or other information in the possession or control of the office that are considered an actuarial report, workpapers or actuarial opinion

1 summary provided in support of the opinion, and any other material provided by the
2 insurer to the executive director in connection with the actuarial report, workpapers or
3 actuarial opinion summary, shall be confidential and privileged, shall not be subject
4 to:

5 1. Public inspection;

6 2. Subpoena;

7 3. Discovery or admissible in evidence in any private civil action.

8 (c) The provisions in subsection (6)(b) of this section shall not be construed to limit
9 the executive director's authority to:

10 1. Release the documents to the Actuarial Board for Counseling and
11 Discipline if the material is required for the purpose of professional disciplinary
12 proceedings and the Actuarial Board for Counseling and Discipline establishes
13 procedures satisfactory to the executive director for preserving the
14 confidentiality of the documents; or

15 2. Use the documents, materials or other information in furtherance of any
16 regulatory or legal action brought as part of the executive director's official
17 duties.

18 (d) Neither the executive director or any person who received documents, materials
19 or other information while acting under the authority of the executive director shall be
20 permitted or required to testify in any private civil action concerning any confidential
21 documents, materials or information subject to subsection (6) of this section.

22 (e) In order to assist in the performance of the executive director's duties, the
23 executive director:

1 1. May share documents, materials or other information, including the
2 confidential and privileged documents, materials or information subject to
3 subsection (6) of this section with other state, federal and international
4 regulatory agencies, with the National Association of Insurance Commissioners
5 and its affiliates and subsidiaries, and with state, federal and international law
6 enforcement authorities, provided that the recipient agrees to maintain the
7 confidentiality and privileged status of the document, material or other
8 information and has the legal authority to maintain confidentiality;

9 2. May receive documents, materials or information, including otherwise
10 confidential and privileged documents, materials or information, from the
11 National Association of Insurance Commissioners and its affiliates and
12 subsidiaries, and from regulatory and law enforcement officials of other foreign
13 or domestic jurisdictions, and shall maintain as confidential or privileged any
14 document, material or information received with notice or the understanding
15 that it is confidential or privileged under the laws of the jurisdiction that is the
16 source of the document, material or information; and

17 3. May enter into agreements governing the sharing and use of
18 information consistent with subsection (6) of this section.

19 (f) No waiver of any applicable privilege or claim of confidentiality in the
20 documents, materials or information shall occur as a result of disclosure to the
21 executive director under this section or as a result of sharing as authorized in
22 subsection (6)(e) of this section.

~~[As used in this section, a "qualified loss reserve specialist" means a person who is not a director, principal, or direct or indirect owner of an insurer and is a member in good standing of the Casualty Actuarial Society, and the American Academy of Actuaries, and who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries, or has other experience acceptable to the executive director to assure a professional opinion on the adequacy of loss and loss adjustment expense reserves.~~

~~(2) — The board of directors of every insurer authorized to transact property or casualty insurance and required to file an annual statement with the executive director pursuant to KRS 304.3-240 shall engage a qualified loss reserve specialist to certify the adequacy of the insurer's loss and loss adjustment expense reserves. The report shall be filed with the annual statement required by KRS 304.3-240.~~

~~(3) — The statement of opinion required by this section shall consist of at least the following information:~~

~~(a) — Identification of the qualified loss reserve specialist;~~

~~(b) — Identification of the subjects on which the opinion is to be expressed and a description of the scope of the qualified loss reserve specialist's work;~~

~~(c) — An expression of the qualified loss reserve specialist's opinion with respect to the subjects required to be described in paragraph (b) of this subsection; and~~

~~(d) — Additional information which the qualified loss reserve specialist considers necessary to state a qualification of opinion or to explain any aspect of the annual statement which is not already sufficiently explained in the annual statement.~~

~~(4)~~ (7) It shall not be necessary to file the actuarial report required by this section in the following instances:

(a) An insurer that has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year, or that has less than one thousand (1,000) policyholders or certificate holders at the end of a calendar year. An insurer which intends to utilize this exemption shall submit a letter of intent to the insurance regulatory official in its domiciliary state no later than December 1 of the calendar year for which the exemption is to be claimed;

(b) An insurer which is under rehabilitation, liquidation, or any other delinquency proceeding ordered pursuant to a statutory provision, unless ordered to make the report by the insurance regulatory official in its domiciliary state;

(c) An insurer writing property insurance only if the exemption is agreed to by the insurance regulatory official in the insurer's domiciliary state; or

(d) Filing the report would constitute financial hardship, which is presumed to exist if the projected reasonable cost of the report would exceed the lesser of: 1. One percent (1%) of the insurer's capital and surplus reflected in the insurer's annual statement for the calendar year for which the exemption is sought; or

2. Three percent (3%) of the insurer's net direct plus assumed premiums written during the calendar year for which the exemption is sought as reflected in the insurer's annual statement filed with the insurance regulator official in its domiciliary state.